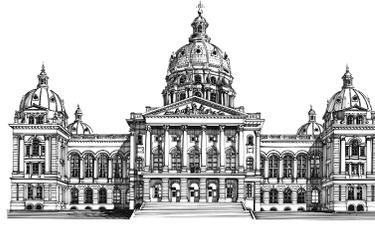

Iowa Legislative Fiscal Bureau

Dennis Prouty
(515) 281-5279
FAX 281-8451



State Capitol
Des Moines, IA 50319
November 7, 2000

Indigent Defense Update

(Updated October 2000)

ISSUE

This **Issue Review** is a history and description of legal representation for indigent criminal justice system clients. The number and cost of indigent defense cases continues to increase. The annual amounts being transferred to other programs or reverted to the General Fund continues to be significant.

AFFECTED AGENCIES

State Public Defender's Office
Department of Inspections and Appeals
Judicial Branch

CODE AUTHORITY

Sections 10A, 13B, and 815, Code of Iowa

BACKGROUND

The Iowa Constitution requires an indigent criminal justice defendant and indigent juveniles to be provided with legal counsel at no cost to the client. Iowa has two methods to provide this legal counsel: public defenders and private attorneys. A judge determines if a person is indigent, based on statute, and then appoints a public defender or private attorney.

Prior to July 1, 1987, the counties paid indigent legal counsel costs, and local Public Defenders were county employees. The General Assembly transferred program expenses to the State beginning in FY 1988, as the last major component of court reorganization. Court reorganization transferred the majority of expenses for the Judicial Branch from counties to the State General Fund, for the purpose of property tax relief, from FY 1983 to FY 1988. Counties still maintain a "base" of expenses for indigent juvenile proceedings. The statewide base is approximately \$1.1 million, as determined by Section 232.141(3.A), Code of Iowa. The State assumes all costs for indigent juvenile cases once the county base is reached. The General Assembly appropriated money to the Judicial Branch in FY 1988 for the costs of private counsel and public defenders. The General Assembly transferred the Program to the State Public Defender's Office in FY 1989. The General Assembly has made certain changes to the Program since FY 1989. The trial judge still determines a client's indigency and appoints either a public defender or private attorney.

The State Public Defender has administrative authority over local public defender offices. There are 19 local public defender offices located in 15 cities. These offices serve 43 counties. The State Public Defender provides legal representation to indigent convicted criminals on appeal, for post-conviction relief proceedings, and may represent indigents during parole revocation proceedings. The State Public Defender is also responsible for indigent juvenile cases. The Office, either through public defenders or private attorneys, provides legal representation in Child In Need of Assistance (CINA), families in need of assistance, delinquency, and termination of parental rights proceedings.

Court-appointed private attorneys provide:

- Legal representation for areas of the State where caseloads are too low to indicate a need for a local public defender office.
- An alternative for legal representation when there may be conflicts of interest with the local public defender's office.
- A "relief valve" for local public defender's offices, when case loads become too great.

CURRENT SITUATION

The State Public Defender now negotiates contracts with private attorneys to provide indigent defense. The State Public Defender creates a list of contract attorneys and provides this list to trial judges, for their use in appointing counsel. All counties have at least one contract-attorney available. The judge may appoint non-contract attorneys in certain cases. The State Public Defender's Office reviews all expense claim reimbursements for court-appointed counsel, and has authority to deny or reduce payment for a claim. Starting in FY 2001, the State Public Defender's Office will pay all indigent juvenile justice claims, and seek reimbursement from the counties until each county's base is met. This will provide accurate information regarding the types and costs of indigent juvenile cases.

Caseloads have risen for both public defenders and court-appointed private attorneys. Total cases have risen by 4.2% from FY 1997 (95,900 cases) to FY 2000 (99,929 cases). Caseloads are driven by:

- New crimes
- Enhanced penalties for existing offenses
- Improved enforcement and prosecution
- Indigency

BUDGET IMPACT

Total costs have increased 22.9% from FY 1997 (\$27.9 million) to FY 2000 (\$34.2 million). Historical information on the average cost per case or claim is illustrated below:

Average Costs FY 1997 – FY 2000

	FY 1997	FY 1998	FY 1999	FY 2000
Court Appointed Attorneys				
Total Expenditures	\$ 16,398,509	\$ 16,873,637	\$ 17,547,683	\$ 19,721,360
Total Claims	35,137	34,065	38,021	42,300
Average Claim Cost	\$467	\$495	\$462	\$466

Public Defenders				
Total Expenditures	\$ 11,456,981	\$ 12,500,047	\$ 13,176,045	\$ 14,516,426
Total cases	60,763	62,102	61,232	57,629
Average case cost	\$189	\$201	\$215	\$252

There have been several provisions related to cost containment implemented:

- The General Assembly capped hourly rates for private attorneys at: \$60 for a Class A felony case; \$55 for a Class B felony case; and \$50 for all other cases. These figures include the \$5.00 per hour increase approved by the General Assembly effective FY 2000.
- The fee limit for sexual predator offenses is \$10,000 per case by private attorneys, as set by administrative rule. This limit may be exceeded with court permission.
- A civil commitment unit within the State Public Defender’s Office has been created for sexual predator cases.
- Fee limitations for combined attorney time and paralegal time are established by administrative rule:
 - Class A felonies \$15,000
 - Sexual Predator offenses \$10,000
 - Felonies subject to 85% rule \$ 3,500
 - Class B felonies \$ 3,000
 - Class C felonies \$ 1,200
 - Class D felonies \$ 1,000
 - Aggravated Misdemeanors \$ 1,000
 - Serious Misdemeanors \$ 500
 - Simple Misdemeanors \$ 200
- The General Assembly defined “indigent” in Chapter 815.9, Code of Iowa. People who receive services through the indigent defense program are required to reimburse the State for all costs incurred in their defense. Indigent defendants paid \$3.6 million during FY 2000 for the costs of their defense. However, the amount of attorney fees assessed annually against indigent defendants is unknown.
- The General Assembly has chosen to add local public defender offices. The average cost per case for public defenders (\$252) is less than the cost per claim of private attorneys (\$466).

In addition to increasing cases and increasing case costs, the amount of appropriation transfers out of the Program has been significant. Historical information is illustrated in the following table:

Indigent Defense and Public Defender Funding

(Dollars in thousands)

	Actual FY 1997	Actual FY 1998	Actual FY 1999	Actual FY 2000	Estimated FY 2001
Indigent Defense					
Approp.	\$17,475.1	\$20,786.5	\$20,912.3	\$20,401.4	\$21,204.4
Transfer Out	260.0	0	60.0	1,175.2	0
Reversion	2,585.3	0	0	0	0
Technology Initiative	0	3,912.9	3,342.1	9.1	0
Public Defender					

Approp.	\$11,022.2	\$12,723.1	\$13,089.3	\$13,906.2	\$14,396.1
Transfer In	260.0	0	0	495.0	0
Reversion	7.8	167.3	0	0	0
Training/Tech. Carryover	0	55.8	6.6	1.6	0
Technology Initiative	0	0	19.9	4.9	0

During FY 1997, \$260,000 was transferred from the Indigent Defense appropriation to the State Public Defender's Office. The appropriation for Indigent Defense was increased during FY 1998 in anticipation of increasing the hourly rate paid to court-appointed counsel. However, there was no hourly rate increase. The appropriation for FY 1999 was increased to eliminate the county base payments for juvenile indigent defense. However, the statutory language that would have eliminated the county base payments was not enacted. Therefore, a significant amount (\$3.9 million in FY 1998 and \$3.3 million in FY 1999) was deposited in the Technology Initiative account through reversions. During FY 1999, \$60,000 was transferred to the Iowa Communications Network.

During FY 2000, \$1.2 million was transferred from the Indigent Defense appropriation to:

- State Public Defender's Office - \$495,000 due to the increased costs of interpreters, court reporters, and witnesses. The State Public Defender's Office had filled all FTE positions, permitting cases to be defended by employees rather than private attorneys. This has resulted in some savings for the Indigent Defense appropriation. Additionally, the full cost of the \$5.00 per hour increase in reimbursement rates of private counsel for indigent clients, had yet to be realized.
- Iowa Ethics and Campaign Disclosure Board - \$2,500 for replacement of a copy machine and higher than anticipated costs for electronic filing software and technical support.
- Department of Human Services' Medical Assistance Program - \$677,678. The ending balance on August 31, 2000, was transferred from the Indigent Defense Program. The State Appeal Board will process any FY 2000 claims received after August 31, 2000, and the costs will be borne by the General Fund. The Department estimates this cost to range from approximately \$200,000 to \$300,000.

During FY 2001, the Indigent Defense appropriation was increased by \$803,000 to annualize the \$5.00 per hour increase in reimbursement rates of private counsel and for a projected increase in indigent defense claims. Employees of the State Public Defender's Office have expressed concern that the FY 2001 budget has limited flexibility.

The State Public Defender's Office is requesting an additional \$1.5 million (7.1%) for indigent defense for FY 2002 due to increased costs of interpreters and expert witnesses and for a projected increase in indigent defense claims.

The State Public Defender's Office is requesting an additional \$1.1 million (7.4%) for FY 2002 as follows:

- \$764,000 due to increased costs of interpreters, expert witnesses, and depositions.
- \$209,800 and 4.0 FTE positions to provide investigative services for attorneys who represent juveniles.
- \$96,100 and 2.0 FTE positions to improve claims processing from court-appointed attorneys.

ALTERNATIVES

There are several alternatives to increasing the appropriations to indigent defense and the State Public Defender's Office. The General Assembly may choose to:

- Not increase the appropriations and make no program changes. Given the amount transferred out of the Indigent Defense Program during FY 2000 (\$1.2 million), funding may be sufficient for FY 2002.
- Implement a reimbursement rate cap for expert witnesses and interpreters. This is similar to the reimbursement rate cap for private attorneys. This proposal may also be a cost containment provision for the Attorney General's Office, inasmuch as that Office also reimburses expert witnesses and interpreters.
- Add more local public defenders. Historically, the cost per case for public defenders has been significantly less than the cost per case of private attorneys.

STAFF CONTACT: Beth Lenstra (Ext. 16301)